



**Billing Code 4310-55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R4-ES-2013-N205; FXES11150400000F4-123-FF04E00000]**

**Spring Pygmy Sunfish Candidate Conservation Agreement with Assurances; Receipt of Applications for Enhancement of Survival Permits; Beaverdam Springs, Limestone County, AL**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have received applications from Mr. Albert C. McDonald of Greenbriar Enterprises LLC (applicant McDonald Farm) and Ms. Katherine H. Garrett of Greenbrier Enterprises LLC (applicant Horton Farm) (collectively, applicants) for enhancement of survival permits (permit or permits) under the Endangered Species Act of 1973, as amended (Act). Each permit application includes a proposed

candidate conservation agreement with assurances (CCAA) between the applicant and the Service as parties and the Land Trust of North Alabama as a cooperator for the conservation of the spring pygmy sunfish. Each Applicant is a limited liability company, created and existing under the laws of the State of Alabama. The CCAAs would be implemented at the Beaverdam Spring Complex within Limestone County, Alabama.

We have made a preliminary determination that each permit application, including the proposed CCAA, is eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this preliminary determination is contained in the draft environmental action statement (EAS) prepared by the Service on each application. We are accepting comments on each permit application and the associated proposed CCAA, as well as on the draft EAS.

**DATES:** We must receive comments no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Persons wishing to review either or both applications, including the draft CCAA, and the draft EAS may obtain copies upon request to Daniel Drennen, Mississippi Field Office, by phone at 601-321-1127, or via mail or email (see below). The applications and related documents will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Jackson, Mississippi, Field Office (address listed below) or on our website at <http://www.fws.gov/mississippiES/endsp.html>.

Comments concerning either or both applications, proposed CCAAs, and draft EASs should be submitted in writing, by one of the following methods:

*Email: daniel\_drennen@fws.gov.*

*Fax: 601-965-4340.*

*U.S. mail:* Daniel Drennen, Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213.

When submitting comments, please specify the application or applications on which you are commenting. Please refer to Permit number TE-155500B-0 when commenting on the McDonald Farm application, and to Permit number TE-15501B-0 for comments on the Horton Farm application.

**FOR FURTHER INFORMATION CONTACT:** Daniel Drennen, Fish and Wildlife Biologist, Mississippi Field Office, 601-321-1127. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We furnish this notice to provide the public, other State and Federal agencies, and interested Tribes an opportunity to review and comment on the permit applications, including the draft CCAAs, and the associated EASs. We specifically request information, views, and opinions from the public on the proposed Federal actions of issuing each permit. Further, we solicit information regarding the adequacy of each permit application, including the proposed CCAA, as measured against our permit issuance criteria found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d).

## **Background**

Private and other non-Federal property owners are encouraged to enter into CCAAs,

in which they voluntarily undertake management activities and conservation efforts on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the Act, candidates for listing, or species that may become candidates or proposed for listing. Via the CCAAs and their associated permits, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species becomes listed under the Act in the future, provided certain conditions are met. The property owners also are assured that, provided certain conditions are met, the Service would not require additional conservation measures or commitment of additional land, water, or resource use restrictions beyond the level obligated in their CCAAs agreement, without the property owner's consent. Application requirements and issuance criteria for permits through CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). See also our policy on CCAAs (64 FR 32726; June 17, 1999).

The conservation of the spring pygmy sunfish is of concern to the Service, other biologists, and the property owners whose lands contain the species. The spring pygmy sunfish is a spring-associated fish, endemic to the Tennessee River drainage of Lauderdale and Limestone Counties in northern Alabama. The species historically occurred in three distinct spring complexes (Cave Springs, Lauderdale County; Beaverdam Springs and Pryor Springs, Limestone County). The single remaining population of the species occupies 5.9 river miles (mi) (9.5 river kilometers) and 1,435 acres (580.6 hectares) within four spring pools (Moss, Beaverdam, Thorsen, and Horton Springs) associated with the upper Beaverdam Springs complex in Limestone County, Alabama.

The preferred habitat for the spring pygmy sunfish is clear and colorless to slightly

stained spring water, spring runs, and associated spring-fed wetlands (Warren 2004). The species is highly localized within these spring pools and is found in association with patches of dense, filamentous submergent vegetation. Spring pygmy sunfish abundance is correlated with specific water quantity and quality parameters (i.e., water flow velocity, turbidity, and water temperatures) and certain associated species such as amphipods, isopods, spring salamanders, crayfish, and snails (Sandel, pers. comm., 2007).

On April 1, 2011, the Service published a 90-day finding on a petition to list the spring pygmy sunfish as endangered under the Act (76 FR 18138). The Service found that the petition presented substantial scientific or commercial information indicating that listing of the species may be warranted, and announced the initiation of a formal status review. On October 2, 2012, the Service published a 12-month finding/proposed rule to list the species as threatened and to designate critical habitat (77 FR 60180) and opened a 60-day comment period that ended on December 2, 2012. On April 29, 2013, the Service re-opened the comment period for 30 days to allow public comment on the draft economic analysis (DEA) and any other aspect of the proposed rule. The Service is currently in the process of making its final listing/critical habitat determination, and anticipates publication of a decision in October 2013.

The areas to be covered under the proposed CCAAs total approximately 272 acres on the McDonald Farm and approximately 440 acres on the Horton Farm within the Beaverdam Springs complex in Limestone County, Alabama. Each proposed CCAA represents a significant milestone in the cooperative conservation efforts for the spring pygmy sunfish,

and is consistent with section 2(a)(5) of the Act, which encourages creative partnerships among public, private, and government entities to conserve imperiled species and their habitats.

Each applicant would agree in its CCAA to implement conservation measures to address known threats to the spring pygmy sunfish. These measures will help protect the species in the near term and also minimize any incidental take of the species that might occur as a result of conducting specified covered activities if the species were listed under the Act in the future. Conservation measures to be implemented by the applicants include: (1) maintaining up to a 100-foot vegetated buffer zone around Beaverdam Creek; (2) limiting cattle access to Beaverdam Creek and the buffer zone; (3) limiting surface and groundwater extraction; and (4) refraining from any deforestation, land clearing, industrial development, residential development, aquaculture, temporary or permanent ground water removal installations, stocked farm ponds, pesticide and herbicide use, and impervious surface installation without prior consultation with the Service.

The Land Trust of North Alabama, as a cooperator to each CCAA, would agree: (1) to be responsible for all reporting requirements, including any changes to the monitoring when necessary for adaptive management; (2) to ensure that annual habitat analyses and site samplings are performed as specified by the CCAA; and (3) to provide resources for reporting and monitoring activities.

The Service would agree to authorize each applicant to engage in incidental take of

the spring pygmy sunfish consistent with its proposed CCAA and to provide technical assistance, including management advice.

The term of each proposed CCAA and associated enhancement of survival permit is 25 years.

When determining whether to issue the permits, we will consider a number of factors and information sources, including the administrative record on each application, any public comments we receive, and the application requirements and issuance criteria for CCAAs set forth in 50 CFR 17.22(d) and 17.32(d). We will also evaluate whether issuance of each permit complies with section 7 of the Act by conducting an intra-Service consultation. Our decision to issue a permit will be based on the results of this consultation, as well as on the above findings, our regulations, and public comments.

We will evaluate each permit application, proposed CCAA, EAS, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1) of the Act, our regulations, and NEPA regulations at 40 CFR 1506.6. If we determine that the requirements are met as to an application, we will enter into the CCAA and issue the permit to the applicant for take of the spring pygmy sunfish in accordance with the terms of its CCAA. We will not make a final decision on either matter until after the end of the 30-day comment period, and we will fully consider all comments received during the comment period.

## **Authority**

We provide this notice under both section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

## **Public Availability of Comments**

All comments we receive become part of our administrative record in this matter. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, Privacy Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including personal identifying information—may be made available to the public at any time. While you may ask us to withhold your personal identifying information from public disclosure, we cannot guarantee that we will be able to do so.

Dated: September 25, 2013.

**Stephen M. Ricks,**  
**Field Supervisor,**  
**Jackson, Mississippi, Field Office,**  
**Southeast Region.**



**[FR Doc. 2013-23871 Filed 09/30/2013 at 8:45 am; Publication Date: 10/01/2013]**